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COUNTY BUDGET COMMISSION—PROHIBITED FROM REDUCING RATE OF ANY LEVY FOR CURRENT SCHOOL OPERATING EXPENSES—NO AUTHORITY FOR SUCH ACT CAN BE IMPLIED FROM THE POWER OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION—§§5713.11, 3317.02, R.C.

SYLLABUS:

A county budget commission is prohibited under the terms of Section 5713.11, Revised Code, from reducing the rate of any levy for current school operating expenses below a level which would result in the school district maintaining an insufficient current operating tax levy to qualify for state aid under Section 3317.02, Revised Code, and no authority for such act by the county budget commission can be implied from the powers of the superintendent of public instruction contained in Section 3317.041, Revised Code.

Columbus, Ohio, April 13, 1960

Hon. Edward R. Ostrander, Prosecuting Attorney
County of Lake, Painesville, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“This office has been consulted by the Fairport Exempted Village School District concerning the action taken on their budget by the Budget Commission of Lake Conty. As a result of a re-evaluation which became effective with the 1959 tax duplicate, their budget request was cut including various levies which had been placed on the duplicate as the result of various elections held in the school district previous to that time pursuant to Section 5713.11. As a result of this reduction, the total tax levy for said school district was reduced below 12.5 mills which action would appear to conflict with the above named section as it was amended effective September 7, 1957. This amendment, of course, refers to Section 3317.01 and following. I also note, however, that Section 3317.041 authorizes the Superintendent of Public Instruction to waive the requirement of Section 3317.02 for a period of one (1) year where action by the County Budget Commission has affected the reduction of the millage requirements of that section.

“The Budget Commission in considering this matter arrived at a two to one vote; that is, the Treasurer and Auditor voted for the reduction and this office voted against it. The Budget Commission, pursuant to Section 5705.34, certified a result of

their determination to the School District, however, this certification bore only the signature of the County Auditor. No appeal has been taken from the action of the Budget Commission by the School District. The School Board has now asked our advice as to whether they are entitled to a millage of 12.5 or whether they are bound to accept a tax rate as fixed by the Budget Commission. I would appreciate your advice on this question at your convenience."

The statute with which you are primarily concerned is Section 5713.11, Revised Code, which reads as follows :

"When the people of any taxing subdivision have voted additional levies for any purpose in the year of reassessment or any year prior thereto, or when the board of tax appeals of Ohio has increased the aggregate value of the real property in any taxing subdivision in any year under the provisions of sections 5715.24 to 5715.26, inclusive, of the Revised Code, and said additional levies are effective in the year of reassessment or thereafter or when the valuation is increased by order of the board of tax appeals to be effective in any year, and the levies are to be calculated on a total valuation of property higher than that of the year before reassessment, or the year before the valuation is increased by order of the board of tax appeals, the rate of said additional levy shall be reduced in the same proportion in which the total valuation of property in said taxing subdivision is increased by the reassessment or is increased by order of the board of tax appeals over the total valuation of the year preceding the reassessment or the order of the board of tax appeals.

"In the case of a school district, the rate of any additional levy for current expenses shall not be reduced below a rate which when added to the rate allowed within the ten-mill limitation for current expenses, results in the total millage for current expenses required by chapter 3317 of the Revised Code."

Prior to 1957, this statute included only the first paragraph with the result that it was then possible to reduce levies, including school levies, in proportion to the increase by reassessment without any special provision to enable a school district to comply with the requirements of Chapter 3317., Revised Code, the school foundation law.

Section 3317.02, Revised Code, requires any local school district which desires to participate in the school foundation program to have a tax levy for current school operation in any current calendar year of at least ten-mills. Prior to 1957 it would have been possible for the county budget commission to reduce the school operating levy below ten mills and thus make that school district ineligible to participate in the school founda-

tion program. Apparently, for this reason, Section 3317.041, Revised Code, was enacted. This section, as enacted in 1955, read as follows :

“The superintendent of public instruction shall waive for a period of one year the requirement of ten mills for current school operation, as provided in section 3317.04 of the Revised Code, in respect to any school district where the total millage for such purpose is reduced below such requirement, by action of the county budget commission or county auditor.”

The apparent purpose of this statute was to allow a school district, which has had its school operating levy reduced below ten mills by the county budget commission, a grace period of one year within which to enact a higher levy. At the time of the enactment of Section 3317.041, Revised Code, Section 3317.04, Revised Code, required school districts to maintain tax levies for current operating expenses of at least ten mills in order to qualify for state aid. In 1957, the second paragraph was added to Section 5713.11, Revised Code, which prevented a reduction by a county budget commission of a school levy below the ten-mill limitation and thus obviated the necessity for Section 3317.041, Revised Code.

In 1956, the then existing Section 3317.04, Revised Code, was repealed and the ten-mill minimum levy provision was placed in Section 3317.02, Revised Code. For this reason the last General Assembly saw fit to make a minor change in Section 3317.041, Revised Code, to delete the reference to Section 3317.04, Revised Code, and substitute for it Section 3317.02, Revised Code, the section now reading :

“The superintendent of public instruction shall waive for a period of one year the requirement of ten mills for current school operation, as provided in section 3317.02 of the Revised Code, in respect to any school district where the total millage for such purpose is reduced below such requirement, by action of the county budget commission or county auditor.”

Although it is true that this technical amendment was enacted after modification of Section 5713.11, Revised Code, to prohibit such action by the county budget commission, the only way by which the apparent inconsistencies in these two statutes may be reconciled is to conclude that the amendment to Section 5713.11, Revised Code, rendered purposeless the authority of the superintendent conferred under Section 3317.041, Revised Code, at least in so far as the reduction is accomplished by a county budget commission pursuant to re-evaluation of taxable property.

There would seem to be no illegality in the second matter you raise, i.e., the certification of the budget commission carrying only the signature of the county auditor. Section 5705.34, Revised Code, requires the budget commission to certify its actions to the taxing authority of each subdivision and other taxing units within the county. Section 5705.27, Revised Code, stipulates that the county auditor shall be the secretary of the commission and shall keep all its records. It would be only appropriate for the county auditor as secretary to be the member of the budget commission delegated to make the certifications required by Section 5705.34, Revised Code. The fact alone that only the county auditor's signature appeared on the certification would not, therefore, invalidate otherwise proper acts of the county budget commission.

It is, therefore, by opinion and you are accordingly advised that a county budget commission is prohibited under the terms of Section 5713.11, Revised Code, from reducing the rate of any levy for current school operating expenses below a level which would result in the school district maintaining an insufficient current operating tax levy to qualify for state aid under Section 3317.02, Revised Code, and no authority for such act by the county budget commission can be implied from the powers of the superintendent of public instruction contained in Section 3317.041, Revised Code.

Respectfully,

MARK McELROY
Attorney General